

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION**

CRIMINAL APPLICATION NO. 529 OF 2017
IN
CRIMINAL WRIT PETITION NO. 3698 OF 2017

Yonus Mehmudd Moniar ..Applicant

v/s.

The State of Maharashtra & Ors. ..Respondents

Mr. Jaikumar Shirdhankar for the Applicant.

Mr. Kartik Garg a/w. Apeksha Dangche for the Respondent No.2.

Ms. N.S.Jain APP for the Respondent No.1 State

**CORAM : SMT. ANUJA PRABHUDESSAI, J.
DATED : JANUARY 15, 2018.
(IN CHAMBER)**

P.C.

1. By this application, the applicants who are the accused in C.C.6200/ 536/2015 have sought recall of the Order dated 8.11.2017.

2. Heard the learned Counsel for the applicant, the learned Counsel for the respondent no.2 and the learned APP for the respondent no.1 State. I have perused the records. The respondent

no.2 who is the first informant in CC/6200/536/2015 had filed Writ Petition No.3698 of 2017 for expeditious disposal of the CC.PW/6200536/2015 pending before the Metropolitan Magistrate 62nd Court, Bhoiwada, Dadar. The first informant had stated that the charge was framed in July 2015 and that the evidence had not commenced since then. Considering the said fact as well as the fact that the first informant was a senior citizen, by Order dated 8.11.2017 this Court directed the trial Judge to record the evidence of the first informant as expeditiously as possible and in any event within a period of two months from the date of receipt of the order.

3. Mr. Jaikumar, learned Counsel for the applicant has submitted that the Order dated 8.11.2017 was passed on the basis of an erroneous statement made by the first informant. He has brought to my notice that the order of framing of charge was challenged by the applicant herein before the Sessions Court, Gr. Bombay and that by Order dated 2.8.2016 the said order of framing of charge was set aside and the Magistrate was directed to frame charge after providing all the relevant documents of the chargesheet to the respondent no.2

accused and after hearing both the sides on the point of framing of charge. He has also stated that the applicant accused has already filed an application for discharge and the same is pending. In view of the above facts. The directions to record the evidence needs to be recalled.

4. The learned Counsel for the respondent no.2 has submitted that he was not aware that the applicant accused had challenged the order of framing of the charge and that the said order had been set aside. He has further brought to my notice that the said fact is not reflected in the copy of the roznama which was produced in the writ petition. He concedes that charge is yet to be framed.

5. It is thus evident that the charge is yet to be framed. Since the applicant accused have filed an application for discharge, there can be no question of recording evidence without deciding the said application and further without framing the charge. The directions to record the evidence was based on an erroneous statement made by the first informant. Hence, the said directions are required to be recalled.

6. Under the circumstances the application is allowed. Direction in order dated 8.11.2017 “to record the evidence of the first informant as expeditiously as possible, and in any event, within a period of two months from the date of receipt of is order” is hereby recalled and instead the trial Judge is directed to dispose of the Criminal Case as expeditiously as possible.

7. It is made clear that all points and contentions are specifically kept open. This Court has not gone into the merits of the matter and the learned Judge shall decide the application for discharge on its own merits.

(ANUJA PRABHUDESSAI, J.)